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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/167290

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 13, 2015, at Appleton, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's Request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By Letter: Lori Schultz

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. On April 23, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST).

3. On April 28, 2015 the petitioner's provider submitted a request for prior authorization of Personal Care Worker hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 42 hours per week for 53 weeks. The provider requested additional time for as needed PCW services and travel time. This was at a cost of \$50,565.00.
4. On June 1, 2015 the Department notified the petitioner in writing that it approved 7 hours week of PCW hours. The Department approved the as needed PCW time and travel time. That time is not at issue in this appeal.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 13, 2015.
6. The petitioner lives with family. The petitioner's PCW is his daughter. His daughter does not live with him.
7. The petitioner is a 60 year old. He had an intracerebral hemorrhage in May of 2002. Other diagnoses include obstructive sleep apnea, sciatica, hypertension, hyperlipidemia, and thoracic aortic aneurysm.

### DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

*Wis. Admin. Code § DHS107.02(3)(b)*

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;

9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider on behalf of petitioner, requested 42 hours per week of Personal Care Worker (PCW) time. They requested additional time for as needed PCW services and travel time. According to the letter from the respondent, the Department approved 7 hours per week of PCW services. They approved the additional time for as needed PCW services and travel time. That additional time is not at issue in this appeal. At the hearing petitioner requested 21 hours of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The petitioner requested additional time in the areas of eating assistance, toileting, and Medically Oriented Tasks. The remaining ADLs are not at issue in this appeal.

With respect to eating assistance, the petitioner's daughter, his PCW testified that she prepares the food for the petitioner, puts the food on a plate, and serves it to the petitioner. She then watches him eat because he can cough and choke. Lastly, she cleans up and assists him to a different room. The PCST states that the petitioner feeds himself, but requires physical assistance at meal time with set up. The screener checks this as option C. Under option C, a person is allowed 5 minutes up to three times per day. However, the instructions for option C state "assistance with eating does not include cutting, spreading, and stirring foods. Activities such as cutting, spreading, and stirring foods are included with meal preparation." The petitioner's daughter describes helping the petitioner prepare the meal. She states she must supervise to avoid a choking incident, however if true this fits under option B, not option C. Option B states, "member is able to feed himself, but requires the presence of another person intermittently for supervision or cueing." The PCW is really supervising the petitioner. She does not have to help him with eating except to prepare the food. Thus, option B, should have been selected. No time is allowed for option B. Thus, the Department's determination is correct in this area.

With respect to toileting, the petitioner's daughter testified that the petitioner has approximately 10 stool accidents each day. Each stool accident requires 15 to 30 minutes for clean-up. This clean-up includes changing the petitioner. This testimony is inconsistent with the PCST, which states that the petitioner has 5 incontinence episodes each day. The Department denied that time because there was no mention of incontinence issues in the medical records. At the hearing, I asked if the petitioner had any diagnosis that supported or tended to show incontinence issues. The petitioner's representative indicated that there was not. I asked further if there was any medical documentation to support this request. I was informed that there was not. The petitioner's daughter mentioned that the petitioner wears "depends." The PCST does not mention observing any depends or any incontinence issues while completing the screen. Given that the burden is on the petitioner, I cannot conclude that he has incontinence issues.

With respect to medically oriented tasks (MOTs) the petitioner's daughter testified that she has to give her father his medication one time per day. The Department denied time for this because "there is no documentation that [the petitioner] has medical issues with his hands or wrists to indicate he cannot physically open a medication bottle and put the medication in his mouth." The petitioner's daughter credibly testified in this respect. The amount time allowed for this is 5 minutes per day. The petitioner's daughter said this takes 10-15 minutes. 5 minutes is more reasonable for opening some pill bottles, getting a glass of water, and giving the person the pills. Thus, the Department should have allowed an additional 5 minutes per day in this area. This amounts to an additional 35 minutes of PCW time per week.

In calculating the total PCW time allowed one must look at the time allowed for ADLs and services incidental to ADLS. Time allowed for ADLs is as follows:

- Bathing – 210 minutes per week
- Dressing – 140 minutes per week
- MOTs – 35 minutes per week

Thus, the total ADL time should be 385 minutes per week. Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The petitioner lives with family. One quarter of 385 is 96.25. Therefore, the petitioner is allowed 385 minutes of PCW for ADL assistance and an additional 96.25 minutes per week for PCW assistance with services incidental to ADLs for a total weekly PCW time 481.25. PCW time is calculated in 15 minute units. 481.25 divided by 15 is 32.08. Rounding up the petitioner should be allowed 33 units of PCW time per week. This amounts to 8.25 hours of PCW time per week.

There was a significant reduction in the area of incontinence care. If the petitioner is able to show additional evidence that incontinence is an issue, he may submit another prior authorization request for additional PCW time.

**I note to petitioner that the provider will not receive a copy of this Decision. In order to have the PCW hours approved here, petitioner must provide a copy of this Decision to the provider. Then, the provider must submit a *new* prior authorization request to receive the approved coverage.**

### **CONCLUSIONS OF LAW**

1. The Department incorrectly modified the PCW hours requested.
2. The petitioner requires 8.25 PCW hours per week for the current authorization period.

**THEREFORE, it is**

### **ORDERED**

That the petitioner's provider is hereby authorized to provide the petitioner with 8.25 PCW hours per week for the period beginning May 4, 2015, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

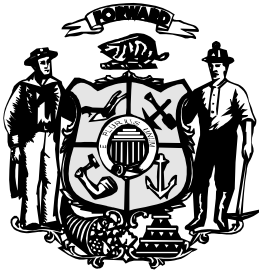
Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of October, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 15, 2015.

Division of Health Care Access and Accountability  
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